

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA  
ERIE DIVISION

WILLIAM H. STEINBRINK, M.D. and  
PATRICIA M. STEINBRINK, his wife,

and

BAYSIDE OBSTETRICS GYNECOLOGY  
INFERTILITY, INC. 401(K) PROFIT  
SHARING PLAN,

Plaintiffs,

v.

ROTHSTEIN, KASS & COMPANY, P.C.,  
B. HAUPTMAN & ASSOCIATES, LLC, and  
BRUCE A. HAUPTMAN,

Defendants.

CIVIL ACTION NO. 01-382 ERIE

**MOTION TO DISMISS**

Defendants B. Hauptman & Associates, LLC ("BHA") and Bruce A. Hauptman (collectively the "BHA Defendants") submit this Motion to Dismiss, pursuant to Fed.R.Civ.P. 12(b)(1), 12(b)(3), 12(b)(6), 12(b)(7), 19 and 9(b) requesting that the claims against them be dismissed with prejudice. For the reasons set forth below, and in the accompanying Memorandum of Law in Support of the BHA Defendants' Motion to Dismiss, Plaintiffs' claims are fatally deficient for the following reasons:

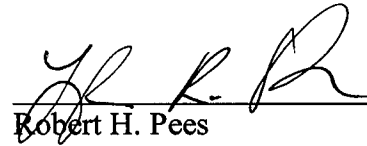
1. All of the claims against the BHA Defendants must be dismissed pursuant to Rule 12(b)(3) for improper venue due to the existence of a mandatory forum selection

clause providing for exclusive jurisdiction and venue in the Delaware Court of Chancery.

2. All of the claims against the BHA Defendants must be dismissed pursuant to Rules 12(b)(1), 12(b)(7) and 19 for failure to join an indispensable party, Gamelan Capital, L.P., whose addition to the case destroys diversity jurisdiction.
3. The breach of contract claim (Count I) must be dismissed with respect to Hauptman pursuant to Rule 12(b)(6) because he cannot be held personally liable for a contract that he is not a personal signatory to and that he entered into solely in his corporate capacity.
4. The conversion and fraud and self-dealing claims (Counts II and III) must be dismissed pursuant to Rule 12(b)(6) as to the BHA Defendants as Pennsylvania's "gist of the action" doctrine bars contract claims that have been repackaged as tort claims.
5. The fraud claim (Count III) must be dismissed against the BHA Defendants pursuant to Rule 9(b) as Plaintiffs have failed to plead fraud with particularity.

The BHA Defendants request oral argument on this Motion.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'R. H. Pees', is written over a horizontal line.

Robert H. Pees  
Lynda R. Stadler  
AKIN GUMP STRAUSS HAUER & FELD  
LLP  
590 Madison Avenue  
New York, New York 10022  
(212) 872-1000

Robert M. Barnes  
MARCUS & SHAPIRA LLP  
One Oxford Centre, 35th Floor  
Pittsburgh, Pennsylvania 15219-6401  
(412) 338-5200

*Attorneys for Defendants  
B. Hauptman & Associates, LLC and  
Bruce A. Hauptman*

Dated: November 22, 2006